

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2071

Introduced by Assembly Member Hagman

February 23, 2012

An act to amend Section ~~1720.4~~ 3346 of the ~~Labor~~ Civil Code, and to amend Section 733 of the Code of Civil Procedure, relating to ~~public works~~ civil damages.

LEGISLATIVE COUNSEL'S DIGEST

AB 2071, as amended, Hagman. ~~Public works: volunteers. Civil damages: trees.~~

Existing law provides damages of 3 times the sum that would compensate for the actual detriment caused by wrongful injuries to, or the removal of, timber, trees, or underwood upon the land of another, unless an exception applies. Among these exceptions, if the defendant had probable cause to believe that the land on which the trespass was committed was his or her own, or the land of the person in whose service or by whose direction the act was done, existing law provides damages of twice the sum that would compensate for the actual detriment. Existing law also provides damages in a sum equal to the actual detriment if wood was taken by the authority of highway officers for specified purposes.

This bill would instead provide damages of 3 times the actual damage for intentional damage to, or removal of, timber, trees, or underwood upon the land of another. For negligent damage as described above, the bill would provide actual damages. For negligent damage sustained on the land of an owner who intended to make commercial use of the damaged timber, trees, or underwood, the bill would provide damages

of 2 times the actual damage. The bill would also provide actual damages for wood taken by the authority of highway officers as described above.

Existing law provides that any person who cuts down or carries off any wood or underwood, tree, or timber, or girdles or otherwise injures any tree or timber on specified lands without lawful authority is liable to the owner of that land, as specified, for treble the amount of damages that may be assessed in a civil action.

This bill would instead hold a person liable for actual damages for the violations described above, except as provided. The bill would provide damages of 2 times the actual damage for violations that occur on the land of an owner who intended to make commercial use of the specified wood. The bill would also provide damages of 3 times the actual damage if the violation was intentional.

This bill would also make technical, nonsubstantive changes to these provisions.

Existing law exempts volunteers, as defined, from the application of provisions that govern public works contracts.

~~This bill would make a technical, nonsubstantive change to this provision.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3346 of the Civil Code is amended to
2 read:
3 3346. (a) For ~~wrongful injuries~~ intentional damage to, or
4 removal of, timber, trees, or underwood upon the land of another;
5 ~~or removal thereof~~, the measure of damages ~~is shall be~~ three times
6 ~~such sum as would compensate for the actual detriment, except~~
7 ~~that where the trespass was casual or involuntary, or that damages.~~
8 (b) Except as provided in subdivision (c), for negligent damage
9 to, or removal of, timber, trees, or underwood upon the land of
10 another, including if the defendant ~~in any action brought under~~
11 ~~this section~~ had probable cause to believe that the land on which
12 the trespass was committed was his or her own or the land of the
13 person in whose service or by whose direction the act was done,
14 the measure of damages shall be ~~twice the sum as would~~

1 ~~compensate for the actual detriment, and excepting further that~~
2 ~~where the wood the actual damages.~~

3 (c) *For negligent damage to, or removal of, timber, trees, or*
4 *underwood upon the land of another, if the owner of the land*
5 *intended to make commercial use of that timber, trees, or*
6 *underwood, the measure of damages shall be two times the actual*
7 *damages.*

8 (d) *If timber, trees, or underwood was taken by the authority*
9 *of highway officers for the purpose of repairing a public highway*
10 *or bridge upon the land or adjoining it, in which case judgment*
11 *shall only be given in a sum equal to the for the actual detriment*
12 *damages.*

13 ~~(b)~~

14 (e) The measure of damages to be assessed against a defendant
15 for any trespass committed while acting in reliance upon a survey
16 of boundary lines which improperly fixes the location of a
17 boundary line; shall be the actual ~~detriment~~ *damages* incurred if
18 both of the following conditions exist:

19 (1) The trespass was committed by a defendant who either
20 himself *or herself* procured, or whose principal, lessor, or
21 immediate predecessor in title procured, the survey to be ~~made;~~
22 ~~and made.~~

23 (2) The survey was made by a person licensed under the laws
24 of this ~~State~~ *state* to practice land surveying.

25 (c) Any action for the damages specified by ~~subdivisions (a)~~
26 ~~and (b)~~ of this section must be commenced within five years from
27 the date of the trespass.

28 SEC. 2. *Section 733 of the Code of Civil Procedure is amended*
29 *to read:*

30 733. (a) Any person who cuts down or carries off any wood
31 ~~or~~, underwood, tree, or timber, or girdles or otherwise ~~injures~~
32 *damages* any tree or timber on the land of another person, or on
33 the street or highway in front of any person's house, village, or
34 city lot, or cultivated grounds; or on the commons or public
35 grounds of any city or town, or on the street or highway in front
36 thereof, ~~without lawful authority~~, is liable to the owner of ~~such~~
37 *that* land, or to ~~such that~~ city or town, for ~~treble the amount of the~~
38 *actual damages which that* may be assessed ~~therefor~~, in a civil
39 action, ~~in~~ by any ~~Court~~ *court* having jurisdiction.

1 (b) If an owner of land described in subdivision (a) intended to
2 make commercial use of the wood, underwood, tree, or timber on
3 the owner's land, the measure of damages shall be two times the
4 actual damages.

5 (c) If the cutting, carrying off, or damage to the wood,
6 underwood, tree, or timber was intentional, the measure of
7 damages shall be three times the actual damages.

8 SECTION 1. Section 1720.4 of the Labor Code is amended to
9 read:

10 1720.4. (a) This chapter does not apply to any of the following
11 work:

12 (1) ~~Any work performed by a volunteer. For purposes of this~~
13 ~~section, "volunteer" means an individual who performs work for~~
14 ~~civic, charitable, or humanitarian reasons for a public agency or~~
15 ~~corporation qualified under Section 501(c)(3) of the Internal~~
16 ~~Revenue Code as a tax-exempt organization, without promise,~~
17 ~~expectation, or receipt of any compensation for work performed.~~

18 (A) ~~An individual shall be considered a volunteer only when~~
19 ~~his or her services are offered freely and without pressure and~~
20 ~~coercion, direct or implied, from an employer.~~

21 (B) ~~An individual may receive reasonable meals, lodging,~~
22 ~~transportation, and incidental expenses or nominal nonmonetary~~
23 ~~awards without losing volunteer status if, in the entire context of~~
24 ~~the situation, those benefits and payments are not a substitute form~~
25 ~~of compensation for work performed.~~

26 (C) ~~An individual shall not be considered a volunteer if the~~
27 ~~person is otherwise employed for compensation at any time (i) in~~
28 ~~the construction, alteration, demolition, installation, repair, or~~
29 ~~maintenance work on the same project, or (ii) by a contractor, other~~
30 ~~than a corporation qualified under Section 501(c)(3) of the Internal~~
31 ~~Revenue Code as a tax-exempt organization, that receives payment~~
32 ~~to perform construction, alteration, demolition, installation, repair,~~
33 ~~or maintenance work on the same project.~~

34 (2) ~~Any work performed by a volunteer coordinator. For~~
35 ~~purposes of this section, "volunteer coordinator" means an~~
36 ~~individual paid by a corporation qualified under Section 501(c)(3)~~
37 ~~of the Internal Revenue Code as a tax-exempt organization, to~~
38 ~~oversee or supervise volunteers. An individual may be considered~~
39 ~~a volunteer coordinator even if the individual performs some~~
40 ~~nonsupervisory work on a project alongside the volunteers, so long~~

1 as the individual's primary responsibility on the project is to
2 oversee or supervise the volunteers rather than to perform
3 nonsupervisory work.

4 (3) Any work performed by the California Conservation Corps
5 or by Community Conservation Corps certified by the California
6 Conservation Corps pursuant to Section 14507.5 of the Public
7 Resources Code.

8 (b) This section shall apply retroactively to otherwise covered
9 work concluded on or after January 1, 2002, to the extent permitted
10 by law.

11 (c) This section shall remain in effect only until January 1, 2017,
12 and as of that date is repealed, unless a later enacted statute, which
13 is enacted before January 1, 2017, deletes or extends that date.